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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALICIA HARRIS, as an individual and on behalf of all others similarly situated,

No.: CV 08 5198 EMC

Plaintiffs,  
VS.

## STIPULATED PROTECTIVE ORDER AND [PROPOSED] ORDER

**VECTOR MARKETING  
CORPORATION, a Pennsylvania  
corporation; and DOES 1 through 20,  
inclusive,**

Complaint Filed: October 15, 2008  
Trial Date: June 6, 2011

## Defendants.

1           This stipulation is entered into by plaintiff Alicia Harris (“plaintiff”) and  
2 defendant Vector Marketing Corporation (“defendant”), as follows:

3           1.     GOOD CAUSE STATEMENT

4           Documents and information sought and exchanged in discovery in this  
5 action may contain, disclose or relate to confidential or sensitive personal, financial,  
6 business or commercial information of plaintiff, defendant, and members of the  
7 putative class, including, but not limited to, personal contact information, telephone  
8 records, and confidential and proprietary business plans and materials, such that the  
9 broad dissemination of information outside of this litigation could result in the  
10 unwarranted disclosure and use of personal contact information and confidential and  
11 sensitive information and may violate individual privacy rights.

12           2.     PURPOSES AND LIMITATIONS

13           Disclosure and discovery activity in this action are likely to involve  
14 production of confidential, proprietary, or private information for which special  
15 protection from public disclosure and from use for any purpose other than prosecuting  
16 this litigation would be warranted. Accordingly, the parties hereby stipulate to and  
17 petition the court to enter the following Stipulated Protective Order. The parties  
18 acknowledge that this Order does not confer blanket protections on all disclosures or  
19 responses to discovery and that the protection it affords from public disclosure and use  
20 extends only to the limited information or items that are entitled under the applicable  
21 legal principles to treatment as confidential. The parties further acknowledge, as set  
22 forth in Section 13, below, that this Stipulated Protective Order creates no entitlement  
23 to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
24 procedures that must be followed and reflects the standards that will be applied when  
25 a party seeks permission from the court to file material under seal.

26           3.     DEFINITIONS

27           3.1     Party: any party to this action, including plaintiff Alicia Harris and  
28 defendant Vector Marketing Corporation, including all of her or its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their  
2 support staff).

3           3.2    Non-Party: any natural person, partnership, corporation,  
4 association, or other legal entity not named as a Party to this action.

5           3.3    Disclosure or Discovery Material: all items or information,  
6 regardless of the medium or manner generated, stored, or maintained (including,  
7 among other things, testimony, transcripts, or tangible things) that are produced or  
8 generated in disclosures or responses to discovery in this matter.

9           3.4    “CONFIDENTIAL” information or Items: information (regardless  
10 of how generated, stored or maintained) or tangible things that qualify for protection  
11 under standards developed under F.R.Civ.P. 26(c).

12           3.5    Receiving Party: a Party that receives Disclosure or Discovery  
13 Material from a Producing Party.

14           3.6    Producing Party: a Party or non-party that produces Disclosure or  
15 Discovery Material in this action.

16           3.7    Designating Party: a Party or non-party that designates  
17 information or items that it produces in disclosures or in responses to discovery as  
18 “CONFIDENTIAL.”

19           3.8    Challenging Party: A Party or Non-Party that challenges the  
20 designation of information or items under this Order.

21           3.9    Protected Material: any Disclosure or Discovery Material that is  
22 designated as “CONFIDENTIAL.”

23           3.10   Outside Counsel of Record: attorneys who are not employees of a  
24 Party but who are retained to represent or advise a Party and have appeared in this  
25 action on behalf of that Party or are associated with a law firm which has appeared on  
26 behalf of that Party, including attorneys at the law firms of Diversity Law Group, Law  
27 Offices of Sherri Jung, Marlin & Saltzman, and Reed Smith.

1                   3.11 House Counsel: attorneys who are employees of a Party. House  
2 Counsel does not include any Outside Counsel of Record or any other outside counsel.

3                   3.12 Counsel (without qualifier): Outside Counsel of Record and House  
4 Counsel (as well as their support staffs).

5                   3.13 Expert: a person with specialized knowledge or experience in a  
6 matter pertinent to the litigation who has been retained by a Party or its counsel to  
7 serve as an expert witness or as a consultant in this action.

8                   3.14 Professional Vendors: persons or entities that provide litigation  
9 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
10 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and  
11 their employees and subcontractors.

12                  4. SCOPE

13                  The protections conferred by this Stipulation and Order cover not only  
14 Protected Material (as defined above), but also any information copied or extracted  
15 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus  
16 testimony, conversations, or presentations by parties or counsel to or in court or in  
17 other settings that might reveal Protected Material. However, the protections  
18 conferred by this Stipulation and Order do not cover the following information: (a) any  
19 information that at the time of disclosure to a Receiving Party is in the public  
20 domain or after its disclosure to a Receiving Party becomes part of the public domain  
21 as a result of publication not involving a violation of this Order; or (b) any  
22 information known to the Receiving Party prior to the disclosure or obtained by the  
23 Receiving Party after the disclosure from a source who obtained the information  
24 lawfully and under no obligation of confidentiality to the Designating Party. Any use  
25 of Protected Material at trial shall be governed by a separate agreement and/or order.

26                  5. DURATION

27                  Even after final disposition of this litigation, the confidentiality  
28 obligations imposed by this Order shall remain in effect until a Designating Party

1 agrees otherwise in writing or a court order otherwise directs. Final disposition shall  
2 be deemed to be the later of (1) dismissal of all claims and defenses in this action,  
3 with or without prejudice; or (2) final judgment herein after the completion and  
4 exhaustion all appeals, rehearings, remands, trials or reviews of this action, including  
5 the time limits for the filing of any motions or applications for extension of time  
6 pursuant to applicable law.

7       6. **DESIGNATING PROTECTED MATERIAL**

8       6.1 Exercise of Restraint and Care in Designating Material for  
9 Protection. Each Party or non-party that designates information or items for protection  
10 under this Order must take care to limit any such designation to specific material that  
11 qualifies under the appropriate standards. To the extent it is practical to do so, the  
12 Designating Party should designate for protection only those parts of material,  
13 documents, items, or oral or written communications that qualify - so that other  
14 portions of the material, documents, items, or communications for which protection is  
15 not warranted are not swept unjustifiably within the ambit of this Order.

16           Mass, indiscriminate, or routinized designations are prohibited.  
17 Designations that are shown to be clearly unjustified, or that have been made for an  
18 improper purpose (e.g., to unnecessarily encumber or retard the case development  
19 process, or to impose unnecessary expenses and burdens on other parties), expose the  
20 Designating Party to sanctions.

21           If it comes to a Designating Party's attention that information or items  
22 that it designated for protection do not qualify for protection do not qualify for  
23 protection, that Designating Party must promptly notify all other parties that it is  
24 withdrawing the mistaken designation.

25       6.2 Manner and Timing of Designations. Except as otherwise provided  
26 in this Order (see, e.g., second paragraph of section 6.2(a), below), or as otherwise  
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or  
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic  
5 documents but not transcripts of depositions or other pretrial or trial proceedings), that  
6 the Producing Party affix the legend “CONFIDENTIAL” to each page that contains  
7 protected material. If only a portion or portions of the material on a page qualifies for  
8 protection, the Producing Party also must clearly identify the protected portion(s)  
9 (e.g., by making appropriate markings in the margins)

10 A Party or non-party that makes original documents or materials  
11 available for inspection need not designate them for protection until after the  
12 inspecting Party has indicated which material it would like copied and produced.  
13 During the inspection and before the designation, all of the material made available  
14 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has  
15 identified the documents it wants copied and produced, the Producing Party must  
16 determine which documents, or portions thereof, qualify for protection under this  
17 Order, then, before producing the specified documents, the Producing Party must affix  
18 the “CONFIDENTIAL” legend to each page that contains Protected Material. If only  
19 a portion or portions of the material on a page qualifies for protection, the Producing  
20 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
21 markings in the margins).

22 (b) for testimony given in deposition or in other pretrial or trial  
23 proceedings, that the Designating Party identify on the record, before the close of the  
24 deposition, hearing, or other proceeding, all protected testimony.

25 (c) for information produced in some form other than documentary,  
26 and for any other tangible items, that the Producing Party affix in a prominent place  
27 on the exterior of the container or containers in which information or item is stored the  
28 legend “CONFIDENTIAL.” If only portions of the information or item warrant

1 protection, the Producing Party, to the extent practicable, shall identify the protected  
2 portions.

3           6.3 Inadvertent Failures to Designate. If timely corrected, an  
4 inadvertent failure to designate qualified information or items does not, standing  
5 alone, waive the Designating Party's right to secure protection under this Order for  
6 such material. Upon timely correction of a designation, the Receiving Party must  
7 make reasonable efforts to assure that the material is treated in accordance with the  
8 provisions of this Order.

9           7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10           7.1 Timing of Challenges. Any Party or Non-Party may challenge a  
11 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
12 Party's confidentiality designation is necessary to avoid foreseeable substantial  
13 unfairness, unnecessary economic burdens, or a later significant disruption or delay of  
14 the litigation, a Party does not waive its right to challenge a confidentiality designation  
15 by electing not to mount a challenge promptly after the original designation is  
16 disclosed.

17           7.2 Meet and Confer. The Challenging Party shall initiate the dispute  
18 resolution process by providing written notice of each designation it is challenging  
19 and describing the basis for each challenge. To avoid ambiguity as to whether a  
20 challenge has been made, the written notice must recite that the challenge to  
21 confidentiality is being made according to this specific paragraph of the Protective  
22 Order. The parties shall attempt to resolve each challenge in good faith and must  
23 begin the process by conferring directly within fourteen days of the date of service of  
24 notice (in voice to voice dialogue; other forms of communication are not sufficient).  
25 In conferring, the Challenging Party must explain the basis for its belief that the  
26 confidentiality designation was not proper and must give the Designating Party an  
27 opportunity to review the designated material, to reconsider the circumstances, and, if  
28 no change in designation is offered, to explain the basis for the chosen designation. A

1 Challenging Party may proceed to the next stage of the challenge process only if it has  
 2 engaged in this meet and confer process first or establishes that the Designating Party  
 3 is unwilling to participate in the meet and confer process in a timely manner.

4       7.3    Judicial Intervention. If the Parties cannot resolve a challenge  
 5 without court intervention, the Designating Party shall file and serve a motion under  
 6 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) to  
 7 retain confidentiality within 21 days of the initial notice of challenge or within  
 8 fourteen days of the parties agreeing that the meet and confer process will not resolve  
 9 their dispute. Each such motion must be accompanied by a competent declaration that  
 10 affirms that the movant has complied with the meet and confer requirements imposed  
 11 in the preceding paragraph. Failure by the Designating Party to make such a motion  
 12 or to file such declaration within 21 days shall automatically waive the confidentiality  
 13 designation for each challenged designation. Notwithstanding this provision, the  
 14 Challenging Party may file a motion challenging a confidentiality designation at any  
 15 time if there is good cause for doing so, including a challenge to the designation of a  
 16 deposition transcript or any portions thereof. Any motion brought pursuant to this  
 17 provision must be accompanied by a competent declaration affirming that the movant  
 18 has complied with the meet and confer requirements imposed by the preceding  
 19 paragraph.

20           The burden of persuasion in any such challenge proceeding shall be on  
 21 the Designating Party. Frivolous challenges, or those made for an improper purpose  
 22 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
 23 expose the Challenging Party to sanctions. Until the court rules on the challenge, all  
 24 parties shall continue to afford the material in question the level of protection to which  
 25 it is entitled under the Producing Party's designation.

26       8.      ACCESS TO AND USE OF PROTECTED MATERIAL

27       8.1    Basic Principles. A Receiving Party may use Protected Material  
 28 that is disclosed or produced by another Party or by a non-party in connection with

1 this case only for prosecuting, defending, or attempting to settle this litigation. Such  
2 Protected Material may be disclosed only to the categories of persons and under the  
3 conditions described in this Order. When the litigation has been terminated, a  
4 Receiving Party must comply with the provisions of section 15, below (FINAL  
5 DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at  
7 a location and in a secure manner that ensures that access is limited to the persons  
8 authorized under this Order.

9           8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
10 otherwise ordered by the court or permitted in writing by the Designating Party, a  
11 Receiving Party may disclose any information or item designated CONFIDENTIAL  
12 only to:

13           (a) The Receiving Party’s Outside Counsel of Record in this action, as  
14 well as employees of said Counsel to whom it is reasonably necessary to disclose the  
15 information for this litigation and who have signed the “Agreement to Be Bound by  
16 Protective Order” that is attached hereto as Exhibit A;

17           (b) the officers, directors, and employees (including House Counsel)  
18 of the Receiving Party to whom disclosure is reasonably necessary for this litigation  
19 and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

20           (c) Experts (as defined in this Order) of the Receiving Party to whom  
21 disclosure is reasonably necessary for this litigation and who have signed the  
22 “Agreement to Be Bound by Protective Order” (Exhibit A);

23           (d) the Court and its personnel;

24           (e) court reporters, their staffs, professional jury or trial consultants,  
25 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary  
26 for this litigation and who have signed the “Agreement to Be Bound by Protective  
27 Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a person who otherwise possessed or knew the information.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
PRODUCED IN OTHER LITIGATION

If a Receiving-Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” that Party must:

(a) promptly notify in writing the Designating Party. Such notification must include a copy of the subpoena or court order;

(b) promptly notify in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued or obtaining the Designating Party’s permission. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material - and nothing in these provisions should be construed as

1 authorizing or encouraging a Receiving Party in this action to disobey a lawful  
2 directive from another court.

3       10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
4 PRODUCED IN THIS LITIGATION

5               (a) The terms of this Order are applicable to information produced by  
6 a non-party in this action and designated as "CONFIDENTIAL," and such  
7 information produced by non-parties in connection with this litigation is protected by  
8 the remedies and relief provided by this Order. Nothing in these provisions should be  
9 construed as prohibiting a non-party from seeking additional protections.

10              (b) In the event that a Party is required by a valid discovery request to  
11 produce a non-party's confidential information in its possession and the Party is  
12 subject to an agreement with the non-party not to produce the non-party's confidential  
13 information, then the Party shall:

14                  (1) promptly notify in writing the Requesting Party and the non-  
15 party that some or all the confidential information requested is subject to the  
16 confidentiality rights of a non-party,

17                  (2) promptly provide the non-party with a copy of the Stipulated  
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
19 particular description of the information requested; and

20                  (3) make the information requested available for inspection by  
21 the non party.

22               (c) If the non-party fails to object or seek a protective order from this  
23 Court within fourteen days of receiving the notice and accompanying information, the  
24 Receiving Party may produce the non-party's confidential information responsive to  
25 the discovery request. If the non-party timely seeks a protective order, the Receiving  
26 Party shall not produce any information in its possession or control that is subject to

1 the confidentiality rights of the non-party.<sup>1</sup> Absent a Court order to the contrary, the  
 2 Non-Party shall bear the burden and expense of seeking protection in this Court of its  
 3 Protected Material.

4       11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5           If a Receiving Party learns that, by inadvertence or otherwise, it has  
 6 disclosed Protected Material to any person or in any circumstance not authorized  
 7 under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best  
 8 efforts to retrieve all copies of the Protected Material, (c) inform the person or persons  
 9 to whom unauthorized disclosures were made of all the terms of this Order, and (d)  
 10 request such a person or persons to execute the “Acknowledgement and Agreement to  
 11 Be Bound” that is attached hereto as Exhibit A.

12       12. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
 13 PROTECTED MATERIAL**

14           When a producing party gives notice to the other parties that certain  
 15 inadvertently produced material is subject to a claim of privilege or other protection,  
 16 the obligations of the parties that received such material are those set forth in Rule  
 17 26(b)(5)(B) of the Federal Rules of Civil Procedure. This provision is not intended to  
 18 modify whatever procedure may be established in an e-discovery order that provides  
 19 for production without prior privilege review.

20       13. **FILING PROTECTED MATERIAL**

21           Without written permission from the Designating Party or a court order  
 22 secured after appropriate notice to all interested persons, a Party may not file in the  
 23 public record in this action any Protected Material. A Party that seeks to file under  
 24 seal any Protected Material must comply with Civil Local Rule 79-5. Protected

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25  
 26  
 27       <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a non-party  
 28 and to afford the interested parties an opportunity to protect their confidentiality interests in this Court.

1 material may only be filed under seal pursuant to a Court order authorizing the sealing  
2 of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing  
3 order will issue only upon a request establishing that the Protected Material at issue is  
4 privileged or protectable as a trade secret or otherwise entitled to protection under the  
5 law.

6       14. **MISCELLANEOUS**

7           14.1 Right to Further Relief. Nothing in this Order abridges the right of  
8 any person to seek its modification by the Court in the future.

9           14.2 Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order no Party waives any right it otherwise would have to object to  
11 disclosing or producing any information or item on any ground not addressed in this  
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
13 ground to use in evidence of any of the material covered by this Protective Order.

14       15. **FINAL DISPOSITION**

15           Within sixty days after the final disposition of this action, as defined in  
16 section 5, each Receiving Party must return all Protected Material to the Producing  
17 Party or destroy such material and provide written certification under oath of such  
18 destruction. As used in this subdivision, "all Protected Material" includes all copies,  
19 abstracts, compilations, summaries or any other form of reproducing or capturing any  
20 of the Protected Material. Whether the Protected Material is returned or destroyed,  
21 the Receiving Party must submit a written certification to the Producing Party (and, if  
22 not the same person or entity, to the Designating Party) by the sixty day deadline that  
23 identifies (by category, where appropriate) all the Protected Material that was returned  
24 or destroyed and that affirms that the Receiving Party has not retained any copies,  
25 abstracts, compilations, summaries or other forms of reproducing or capturing any of  
26 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain  
27 an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
28 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert

1 reports, attorney work product and consultant and expert work product, even if such  
2 materials contain Protected Material. Any such archival copies that contain or  
3 constitute Protected Material remain subject to this Protective Order as set forth in  
4 Section 5 (DURATION), above.

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated: April 22, 2010

Marlin & Saltzman

7  
8 By: \_\_\_\_\_ /s/  
9 Christina Humphrey  
10 Attorneys for Plaintiff

11 Dated: April 22, 2010

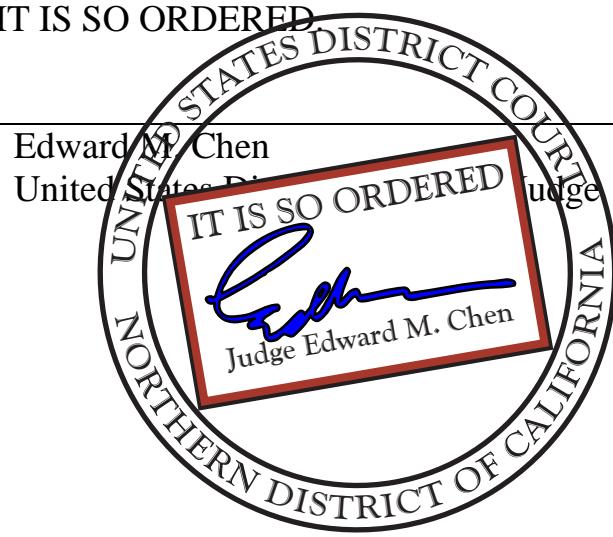
REED SMITH, LLP

12  
13 By: \_\_\_\_\_ /s/  
14 John P. Zaimes  
15 Attorneys for Defendant

16  
17 PURSUANT TO STIPULATION, IT IS SO ORDERED

18  
19  
20 4/30/10

21 DATED: \_\_\_\_\_



## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of \_\_\_\_\_ [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]